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U.S. DISTRICT COURT E.D.N.Y.
★ JUL 02 2010 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MERLYN EMMONS,

Plaintiff,

- against -

THE CITY UNIVERSITY OF NEW YORK,
THE RESEARCH FOUNDATION OF THE
CITY UNIVERSITY OF NEW YORK,
EDISON JACKSON, ANDRE LAKE,
SANDRA SMITH, HANNA GUADA,
and EVELYN WATSON,

Defendants.
----- X

MEMORANDUM AND ORDER

09-CV-537 (ENV)(JMA)

VITALIANO, D.J.

On June 2, 2010, the Court addressed defendants' motions to dismiss the complaint, and issued a Memorandum and Order dismissing the majority of plaintiff's federal and state causes of action. In so ruling, the Court granted plaintiff permission to amend the complaint and replead some of those causes of action, provided that she could do so in compliance with her Rule 8 and Rule 11 obligations. For other dismissed claims, including plaintiff's claims for interference with her rights pursuant to the Family Medical and Leave Act, 29 U.S.C. § 2601 et seq. ("FMLA"), the Court denied leave to replead.¹ (See Docket No. 36.) Plaintiff now asks the Court to "change the dismissal of said [FMLA interference] claim with prejudice to dismissal without prejudice" because she claims an ability to "amplify her claims with facts and allegations that were not included" in the initial complaint.

In light of plaintiff's representation, the Court, pursuant to Federal Rule of Civil Procedure 60(b), relieves plaintiff of that portion of the prior Order dismissing the FMLA

¹ Several of plaintiff's retaliation-based claims pursuant to the FMLA survived the motions to dismiss.

interference claims with prejudice. That dismissal is now ordered without prejudice. Plaintiff, as a result, may file an amended complaint incorporating FMLA interference claims, on the same terms and conditions the prior Order permits the repleading of other dismissed claims, by no later than July 9, 2010. Obviously, defendants remain free to test the efficiency of any or all of the repleaded claims asserted in the amended complaint, including the repleaded FMLA interference claims.

SO ORDERED.

Dated: Brooklyn, New York
July 2, 2010

s/Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge